

hearing on such application and the Secretary shall hold a hearing and render a decision on such application at the earliest possible time.

(B) JUDICIAL REVIEW.—Within—

(i) 10 days after the date the respondent was served with a temporary cease-and-desist order entered with a prior hearing before the Secretary; or

(ii) 10 days after the Secretary renders a decision on an application and hearing under paragraph (1), with respect to any temporary cease-and-desist order entered without a prior hearing before the Secretary,

the respondent may apply to the United States district court for the district in which the respondent resides or has its principal place of business, or for the District of Columbia, for an order setting aside, limiting, or suspending the effectiveness or enforcement of the order, and the court shall have jurisdiction to enter such an order. A respondent served with a temporary cease-and-desist order entered without a prior hearing before the Secretary may not apply to the court except after hearing and decision by the Secretary on the respondent's application under subparagraph (A).

(C) NO AUTOMATIC STAY OF TEMPORARY ORDER.—The commencement of proceedings under subparagraph (B) shall not, unless specifically ordered by the court, operate as a stay of the Secretary's order.

(5) AUTHORITY OF THE SECRETARY TO PROHIBIT PERSONS FROM SERVING AS LOAN ORIGINATORS.—In any cease-and-desist proceeding under paragraph (1), the Secretary may issue an order to prohibit, conditionally or unconditionally, and permanently or for such period of time as the Secretary shall determine, any person who has violated this subtitle or regulations thereunder, from acting as a loan originator if the conduct of that person demonstrates unfitness to serve as a loan originator.

(d) AUTHORITY OF THE SECRETARY TO ASSESS MONEY PENALTIES.—

(1) IN GENERAL.—The Secretary may impose a civil penalty on a loan originator operating in any State which is subject to licensing system established by the Secretary under section 107 if the Secretary finds, on the record after notice and opportunity for hearing, that such loan originator has violated or failed to comply with any requirement of this subtitle or any regulation prescribed by the Secretary under this subtitle or order issued under subsection (c).

(2) MAXIMUM AMOUNT OF PENALTY.—The maximum amount of penalty for each act or omission described in paragraph (1) shall be \$5,000 for each day the violation continues.

#### **Subtitle B—Residential Mortgage Loan Origination Standards**

##### **SEC. 121. DEFINITIONS.**

Section 103 of the Truth in Lending Act (15 U.S.C. 1602) is amended by adding at the end the following new subsection:

“(cc) DEFINITIONS RELATING TO MORTGAGE ORIGINATION AND RESIDENTIAL MORTGAGE LOANS.—

“(1) COMMISSION.—Unless otherwise specified, the term ‘Commission’ means the Federal Trade Commission.

“(2) FEDERAL BANKING AGENCIES.—The term ‘Federal banking agencies’ means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, and the National Credit Union Administration Board.

“(3) MORTGAGE ORIGINATOR.—The term ‘mortgage originator’—

“(A) means any person who—

“(i) takes a residential mortgage loan application;

“(ii) assists a consumer in obtaining or applying to obtain a residential mortgage loan; or

“(iii) offers or negotiates terms of a residential mortgage loan, for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain;

“(B) includes any person who represents to the public, through advertising or other means of communicating or providing information (including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items), that such person can or will provide any of the services or perform any of the activities described in subparagraph (A); and

“(C) does not include any person who is not otherwise described in subparagraph (A) or (B) and who performs purely administrative or clerical tasks on behalf of a person who is described in any such subparagraph.

“(4) NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY.—The term ‘Nationwide Mortgage Licensing System and Registry’ has the same meaning as in section 102(5) of the Mortgage Reform and Anti-Predatory Lending Act of 2007.

“(5) OTHER DEFINITIONS RELATING TO MORTGAGE ORIGINATOR.—For purposes of this subsection, a person ‘assists a consumer in obtaining or applying to obtain a residential mortgage loan’ by, among other things, advising on residential mortgage loan terms (including rates, fees, and other costs), preparing residential mortgage loan packages, or collecting information on behalf of the consumer with regard to a residential mortgage loan.

“(6) RESIDENTIAL MORTGAGE LOAN.—The term ‘residential mortgage loan’ means any consumer credit transaction that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or on residential real property that includes a dwelling, other than a consumer credit transaction under an open end credit plan or a reverse mortgage.

“(7) SECRETARY.—The term ‘Secretary’, when used in connection with any transaction or person involved with a residential mortgage loan, means the Secretary of Housing and Urban Development.

“(8) SECURITIZATION VEHICLE.—The term ‘securitization vehicle’ means a trust, corporation, partnership, limited liability entity, or special purpose entity that—

“(A) is the issuer, or is created by the issuer, of mortgage pass-through certificates, participation certificates, mortgage-backed securities, or other similar securities backed by a pool of assets that includes residential mortgage loans; and

“(B) holds such loans.

“(9) SECURITIZER.—The term ‘securitizer’ means the person that transfers, conveys, or assigns, or causes the transfer, conveyance, or assignment of, residential mortgage loans, including through a special purpose vehicle, to any securitization vehicle, excluding any trustee that holds such loans solely for the benefit of the securitization vehicle.”

##### **SEC. 122. RESIDENTIAL MORTGAGE LOAN ORIGINATION.**

(a) IN GENERAL.—Chapter 2 of the Truth in Lending Act (15 U.S.C. 1631 et seq.) is amended by inserting after section 129 the following new section:

#### **“§ 129A. Residential mortgage loan origination**

“(a) DUTY OF CARE.—

“(1) STANDARD.—Subject to regulations prescribed under this subsection, each mortgage originator shall, in addition to the duties imposed by otherwise applicable provisions of State or Federal law—

“(A) be qualified, registered, and, when required, licensed as a mortgage originator in accordance with applicable State or Federal law including subtitle A of title I of the Mortgage Reform and Anti-Predatory Lending Act of 2007;

“(B) with respect to each consumer seeking or inquiring about a residential mortgage loan, diligently work to present the consumer with a range of residential mortgage loan products for which the consumer likely qualifies and which are appropriate to the consumer's existing circumstances, based on information known by, or obtained in good faith by, the originator;

“(C) make full, complete, and timely disclosure to each such consumer of—

“(i) the comparative costs and benefits of each residential mortgage loan product offered, discussed, or referred to by the originator;

“(ii) the nature of the originator's relationship to the consumer (including the cost of the services to be provided by the originator and a statement that the mortgage originator is or is not acting as an agent for the consumer, as the case may be); and

“(iii) any relevant conflicts of interest;

“(D) certify to the creditor, with respect to any transaction involving a residential mortgage loan, that the mortgage originator has fulfilled all requirements applicable to the originator under this section with respect to the transaction; and

“(E) include the unique identifier of the originator provided by the Nationwide Mortgage Licensing System and Registry on all loan documents.

“(2) CLARIFICATION OF EXTENT OF DUTY TO PRESENT RANGE OF PRODUCTS AND APPROPRIATE PRODUCTS.—

“(A) NO DUTY TO OFFER PRODUCTS FOR WHICH ORIGINATOR IS NOT AUTHORIZED TO TAKE AN APPLICATION.—Paragraph (1)(B) shall not be construed as requiring—

“(i) a mortgage originator to present to any consumer any specific residential mortgage loan product that is offered by a creditor which does not accept consumer referrals from, or consumer applications submitted by or through, such originator; or

“(ii) a creditor to offer products that the creditor does not offer to the general public.

“(B) APPROPRIATE LOAN PRODUCT.—For purposes of paragraph (1)(B), a residential mortgage loan shall be presumed to be appropriate for a consumer if—

“(i) the mortgage originator determines in good faith, based on then existing information and without undergoing a full underwriting process, that the consumer has a reasonable ability to repay and receives a net tangible benefit (as determined in accordance with regulations prescribed under section 129B(a)); and

“(ii) the loan does not have predatory characteristics or effects (such as equity stripping and excessive fees and abusive terms) as determined in accordance with regulations prescribed under paragraph (4).

“(3) RULES OF CONSTRUCTION.—No provision of this subsection shall be construed as—

“(A) creating an agency or fiduciary relationship between a mortgage originator and a consumer if the originator does not hold himself or herself out as such an agent or fiduciary; or

“(B) restricting a mortgage originator from holding himself or herself out as an agent or fiduciary of a consumer subject to any additional duty, requirement, or limitation applicable to agents or fiduciaries under any Federal or State law.

“(4) REGULATIONS.—

“(A) IN GENERAL.—The Federal banking agencies, in consultation with the Secretary and the Commission, shall jointly prescribe regulations to—

“(i) further define the duty established under paragraph (1);

“(ii) implement the requirements of this subsection;

“(iii) establish the time period within which any disclosure required under paragraph (1) shall be made to the consumer; and

“(iv) establish such other requirements for any mortgage originator as such regulatory agencies may determine to be appropriate to meet the purposes of this subsection.

“(B) COMPLEMENTARY AND NONDUPLICATIVE DISCLOSURES.—The agencies referred to in subparagraph (A) shall endeavor to make the required disclosures to consumers under this subsection complementary and non duplicative with other disclosures for mortgage consumers to the extent such efforts—